

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

<b>Competitive Market Initiatives</b>	)	<b>D.T.E. 01-54A</b>
	)	
	)	

**DIVISION OF ENERGY RESOURCES' OPPOSITION TO MOTION FOR  
RECONSIDERATION AND CLARIFICATION**

The Massachusetts Division of Energy Resources ("DOER"), in accordance with 220 CMR 1.11(10), herein responds in opposition to the Attorney General's Motion for Reconsideration and Clarification (the "Motion") of the Department's October 15, 2001 Order in D.T.E. 01-54A; Investigation by the Department of Telecommunications and Energy on its Own Motion into Competitive Market Initiatives (the "Order"). The Order was issued by the Department following the convening of an extensively-attended technical session, participation by parties representing all market participants and stakeholders, and receipt of numerous written comments. The Order correctly considered all the issues raised to the Department and evidences no inadvertence or error.

**Standard for Review**

The Department's standard for reconsideration is, as articulated by the Attorney General at page 2. of the Motion, well established. Reconsideration is warranted only in extraordinary circumstances or when significant, previously unknown or unavailable facts are brought to light. This standard is functionally equivalent to that applied by the trial courts when considering a Motion for Relief From Judgment or Order under Rule 60(b) of the Mass. R. Civ. Pro. Rule 60(b) provides for reconsideration upon making a demonstration of mistake, inadvertence, excusable neglect, or newly discovered

evidence. The Motion fails to satisfy this standard.

### **Argument**

The Motion does not argue that extraordinary circumstances exist, necessitating Department reconsideration. The Motion does not argue that the Order was the result of mistake, inadvertence, or excusable neglect. The Motion does not argue that newly discovered evidence has been brought to light.

The Motion argues that the Order was the result of substantive Department error, that the Department: (1) erroneously interpreted its own regulations and (2) misused its regulatory authority by concluding that good cause existed to allow the release of historic usage data through the opt-out process.

While the Attorney General may take issue substantively with the Department's Order, that is not a basis for reconsideration. Reconsideration is, for good cause, limited to those cases where it is demonstrated that some event has occurred that would have materially changed the substance of the decision rendered. Thus, a demonstration of clerical error that changes the meaning of a decision or the discovery of information that was unavailable for consideration during the deliberative development of a decision may trigger reconsideration. The Attorney General has failed to make either showing. The argument raised by the Motion was submitted to the Department through the Attorney General's written comments during the course of the Department's investigation.<sup>1</sup>

---

<sup>1</sup> The Initial Comments of the Attorney General, (August 10, 2001) at pages 2 and 3, oppose the release of historic customer data without the implementation of a customer "opt-in" mechanism:

The Attorney General renews his recommendation that customers are given the affirmative right to choose not to participate in the requirement that the distribution company make available default service customers

Reconsideration of the Order is unwarranted and unjustified in this proceeding. Such an action by the Department would simply invite demands for substantive reconsideration by any party discontented with a Department decision. The forum for such review is provided by the Massachusetts courts. Outside of the very limited circumstances occasioned by extraordinary events, demonstrable clerical mistakes, or newly discovered evidence, agencies are not and should not be required to revisit every decision they make.

### **Conclusion**

The Department's Order was appropriate and was developed in a considered manner that took into account the issues and concerns of all parties. The Department should deny the Motion for Reconsideration and Clarification.

Respectfully submitted,

Carol R. Wasserman  
Deputy General Counsel  
Massachusetts Division of Energy Resources  
70 Franklin Street, 7<sup>th</sup> Floor  
Boston, MA 02110

---

names, addresses and rate classes to suppliers and brokers.

The Attorney General urges the Department to order distribution companies to immediately notify customers via a separate mailing of the release of the data to suppliers and to provide a response card and phone number that would enable customers to notify a company of their choice to have any of their information removed from further release...

It is the Attorney General's position that the unauthorized release of customer credit and load information by distribution companies, suppliers and brokers is an unfair and deceptive trade practice or act that may be actionable under General Laws, Chapter 93A, and that load and credit information may be released as proposed only with the prior consent of the customer.

(617) 727-4732

Dated: November 7, 2001